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Report of the Special Rapporteur on the human rights to safe drinking water and sanitation*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, prepared pursuant to Council resolutions 27/7 and 33/10. In the report, the Special Rapporteur focuses on the human rights to water and sanitation of forcibly displaced persons, in particular internally displaced persons, refugees, asylum seekers and migrants in vulnerable situations, while en route, at borders, at reception and at destination. He examines the situation of their access to water and sanitation from a human rights perspective by applying the normative content of the human rights to water and sanitation and the human rights principles of participation, equality and non-discrimination, sustainability, progressive realization and access to remedies.

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I. Introduction

1. Pursuant to Human Rights Council resolutions 27/7 and 33/10, the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, has worked on identifying challenges and obstacles to the full realization of the human rights to safe drinking water and sanitation, and on protection gaps, good practices and enabling factors. In the present report, the Special Rapporteur focuses on the human rights to water and sanitation of forcibly displaced persons.

2. To develop the report, the Special Rapporteur addressed questionnaires to States and other stakeholders, which elicited a total of 18 submissions.[1] In addition, he convened a brainstorming round table on 13 September 2017 and an expert consultation on 16 and 17 May 2018, both in Geneva.

3. By the end of 2016, 65.6 million people — 22.5 million refugees, 2.8 million asylum seekers and 40.3 million internally displaced persons — had been forcibly displaced worldwide as a result of persecution, armed conflict, other situations of violence, or human rights violations.[2] In addition, millions of migrants are forcibly displaced as a result of extreme poverty, discrimination, climate change, forced evictions and other situations.

4. Disasters continue to trigger new displacements every year (18.8 million in 2017)[3] and are likely to do so even more in the future, given the likelihood that climate change will increase the number of extreme weather events and will cause more severe and chronic droughts and flooding in some regions. It is estimated that 10 to 15 million people are forcibly displaced every year by development projects, such as dam construction, urban development, and transportation and infrastructure programmes.[4]

5. For the purposes of the present report, the Special Rapporteur considers forcibly displaced persons those who are forced to move, within or across borders, as a result of above mentioned causes — mainly internally displaced persons, refugees, asylum seekers and migrants in vulnerable situations while en route, at borders, at reception and at destination. In the report, the Special Rapporteur specifically focuses on people affected by forced displacement who are unable, for reasons beyond their control, to realize their human rights to water and sanitation by the means at their disposal, and who have to rely, as a result, on national or international assistance.

6. All forcibly displaced persons are equally entitled to the human rights to safe drinking water and sanitation irrespective of their current location and the status bestowed on them, and even in cases where they are considered ineligible for international refugee protection. Access to water and to sanitation is not only a fundamental human right for human survival and health but also for living life in dignity. The fundamental role of access to water and sanitation is also understood by affected persons themselves, such as those internally displaced in Juba who referred to access to food, water, health and protection as what human rights meant to them.[5]

7. The framework of the human rights to water and sanitation must be applied at all times: before, during and after emergency situations, during development projects, and in other situations that may lead to forced displacement. The human rights to water and sanitation in emergency situations are, however, all too often compromised. More children

[1] See www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/ForciblyDisplacedPersons.aspx.

[2] Office of the United Nations High Commissioner for Refugees (UNHCR), *Global Trends: Forced Displacement in 2016*, UNHCR, 2017.

[3] Internal Displacement Monitoring Centre, Global Report on Internal Displacement 2018, May 2018.

[4] Internal Displacement Monitoring Centre, Dams and Internal Displacement: An Introduction, 11 April 2017. See also www.forcedmigration.org/research-resources/expert-guides/development-induced-displacement-and-resettlement/global-overview.

[5] Roberta Cohen, *Listening to the Voices of the Displaced: Lessons Learned*, September 2008, p. 33.

still die from poor water quality and sanitation-related diseases than from direct violence in many conflict-affected countries.[6]

8. Participants in the World Humanitarian Summit, held in May 2016, affirmed that forced displacement is not only a humanitarian challenge, but also a political, development and human rights one (A/71/353, para. 23). It directly affects the enjoyment of the human rights to water and sanitation both of forcibly displaced persons and of the communities that host them. When relying on humanitarian assistance, people tend to be seen as "victims", "beneficiaries" or "recipients"; persons in need of humanitarian assistance should, however, be recognized as rights holders.

9. The human rights to water and sanitation derive from the right to an adequate standard of living, which is protected under, inter alia, article 25 of the Universal Declaration of Human Rights and article 11 of the International Covenant on Economic, Social and Cultural Rights. Furthermore, the General Assembly and the Human Rights Council have explicitly recognized the human rights to water and sanitation as two distinct but interrelated human rights. The human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.[7] The human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity.

10. International human rights law, which applies at all times, and international humanitarian law, which applies to armed conflict, provide complementary and mutually reinforcing protection of the human rights to water and sanitation.[8] In its general comment No. 15 (2002) on the rights to water, the Committee on Economic, Social and Cultural Rights confirmed that the International Covenant on Economic, Social and Cultural Rights and the human rights to water and sanitation apply even in times of armed conflict, natural disasters or other emergency situations. States therefore have an obligation to provide water and sanitation services to forcibly displaced persons who do not have sufficient means, whether they are staying in camps, informal settlements, detention centres, or urban or rural areas. As State capacity may be limited in such situations, international organizations, non-governmental organizations, funders and other humanitarian organizations can play a key role in providing assistance. Such organizations also should respect, protect and facilitate the human rights to water and sanitation in the services they provide (A/71/302, para. 13; A/72/127, paras. 14–19). They should give priority to the most vulnerable or marginalized groups of the population when providing humanitarian aid, including in the provision and management of water and sanitation services.[9]

11. Pursuant to international human rights law, forcibly displaced persons in transit or at destinations should be guaranteed access to water and sanitation on the same conditions as granted to nationals of the States concerned, regardless of their legal status and documentation.[10] Differential treatment on grounds of nationality or legal status is prohibited unless it is in accordance with the law, pursues a legitimate aim and remains proportionate to the aim pursued.

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[6] United Nations Children's Fund (UNICEF), "UNICEF seeks $3.6 billion in emergency assistance for 48 million children caught up in catastrophic humanitarian crises", press release, 30 January 2018.

[7] See Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water. See also General Assembly resolution 70/169 and Human Rights Council resolution 33/10.

[8] United Nations, *International Legal Protection of Human Rights in Armed Conflict*, Office of the United Nations High Commissioner for Human Rights (OHCHR), New York and Geneva, 2011.

[9] Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 60.

[10] See ibid., para. 16 (f); E/C.12/2017/1, para. 3; and Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 30.

II. Persons en route, in transit, at reception and in destination countries

12. When forcibly displaced persons are en route, in transit or at reception, they are vulnerable, because they require access to water and sanitation immediately and continuously in unfamiliar places. The actors that provide assistance to them are often multiple and changeable, from place of origin to destination and from national agencies to international and non-governmental organizations.

13. In response to the questionnaire of the Special Rapporteur, several States explained that they applied the same national standard of water and sanitation to refugees, asylum seekers and migrants en route, as required by human rights law. Some States applied the Sphere standards, a set of minimum standards applicable in humanitarian responses. Although the Sphere standards are widely recognized and adopted, they are not a binding instrument. Except for certain situations in armed conflicts, there are no mandatory standards on access to water, sanitation and hygiene that humanitarian actors are required to follow in emergencies.

14. For such situations, the human rights framework does not provide quantitative guidance, which could be counterproductive given that requirements have to be assessed on a case-by-case basis. Human rights core obligations must, however, be applied as a legal basis for humanitarian assistance. During an emergency, immediate obligations of access to the minimum essential level of water and sanitation on a non-discriminatory basis apply. Human rights law prescribes a core obligation for the immediate realization of the minimum essential level of each right, without exception. The Committee on Economic, Social and Cultural Rights identified, in its general comment No. 15 (2002) on the right to water, these core obligations as ensuring safe and equal access to the minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent diseases, especially for disadvantaged or marginalized groups; adopting and implementing a national water strategy and plan of action addressing the whole population; monitoring the extent of the realization of the right to water; adopting relatively low-cost targeted water programmes to protect vulnerable and marginalized groups; and taking measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation. Even though the Committee does not make any explicit reference to the core obligation of the right to sanitation (which until recently was treated as an integral part of the right to water) the core obligation for the immediate realization of the right to sanitation can be assumed as what every person needs for health and survival, and to live in dignity. The core obligations reflect the actual practice of many States at the national level; what forcibly displaced persons actually require may be quite different, depending on the individuals concerned, cultural factors, locations or other specific factors. The human rights to water and sanitation can provide guidance on the extent to which and how the needs of forcibly displaced persons should be fulfilled.

15. In the present report, the Special Rapporteur examines the situation of access to water and sanitation by forcibly displaced persons from a human rights perspective, by applying the normative content of the human rights to water and sanitation (accessibility, quality, affordability, availability, acceptability, privacy and dignity) and the human rights principles of participation, equality and non-discrimination, sustainability, progressive realization and access to remedies. The primary intention of the Special Rapporteur is to put a human face on the issue of access to water and sanitation by forcibly displaced persons and to acknowledge them as rights holders.

A. Persons en route, in transit and at reception

16. En route, many displaced persons are forced to travel in harsh conditions, such as heat or cold, without adequate protection or assistance. It is estimated that more than

130,000 people died en route in the Sahara Desert between 2011 and 2017 due to lack of water and food and the harsh weather.[11]

17. In reception and detention facilities under the authority of receiving countries, States often do not apply the same conditions as those granted to nationals, and provide a lower standard of water and sanitation services to forcibly displaced persons,[12] possibly on the basis of a discriminatory policy or owing to the lack of a policy on forcibly displaced persons. Poor conditions are sometimes used to discourage forcibly displaced persons from entering these countries or to expel them. In some countries, migrants are detained, even where irregular migration is not a criminal offence. Migrants and sometimes their children are detained in unacceptable substandard conditions, with poor hygiene, and limited or no access to sanitation, water and other services (see A/HRC/20/24 and A/HRC/28/68).

18. In November 2017, Australia withdrew from the Manus Regional Processing Centre in Papua New Guinea, which detained asylum seekers pending the processing of their asylum claims. Following the decision, 606 asylum seekers who refused to leave the centre out of concern for their safety claimed that they had to dig into the ground in search of water, two days after the centre had officially closed.[13] There was no water, food, electricity or access to medical treatment for those remaining in the centre. In Europe, many refugees, asylum seekers and migrants while en route, at borders and at reception, after dangerous and arduous journeys, have been subjected to immigration detention in substandard conditions, with inadequate and insufficient water, dysfunctional toilets and limited opportunities for personal hygiene.[14] In France, in the city of Calais and other areas along the northern coast, asylum seekers and migrants en route to the United Kingdom of Great Britain and Northern Ireland have limited or no access to water and sanitation, and in some instances have no choice but to defecate in the open. Even though the State Council of France ruled that such conditions constituted a failure by the authorities and that migrants were exposed to inhuman and degrading treatment, neither the Government nor local authorities have implemented the Court's order to provide drinking water, toilets and showers.[15]

19. Even if receiving countries have limited resources, they cannot justify "restricting the enjoyment of the essential content" of economic, social and cultural rights because of lack of resources.[16] According to the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, resource scarcity does not relieve States of their minimum obligations, which are non-derogable, to realize economic, social and cultural rights. States, particularly economically developed States, have no justification for providing forcibly displaced persons with substandard water and sanitation services or for using poor living conditions as a means to discourage them from entering the territory or to expel them.

B. Emergency situations

20. In the immediate aftermath of a disastrous event, humanitarian actors implement an initial emergency response for a duration of approximately six months.

1. Camps for refugees, migrants and internally displaced persons

21. Forcibly displaced persons staying in organized camps are more likely to have better access to water and sanitation services and other humanitarian assistance than those not

[11] Vittorio Bruni et al., *Study on Migration Routes in West and Central Africa*, Maastricht Graduate School of Governance, 2017.

[12] Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water.

[13] See A/HRC/38/54, chap. III, communications PNG 3/2017 and AUS 7/2017.

[14] United Nations, *In Search of Dignity: Report on the human rights of migrants at Europe's borders*, OHCHR, Geneva, 2017, p. 27.

[15] See A/HRC/38/54, chap. III, communication FRA 7/2017.

[16] Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water.

admitted to the camp. The standard of services provided to forcibly displaced persons in emergency situations depends on how quickly financial, human and material resources can be mobilized. The amount of resources made available depends on the political, geographic and financial situations of both the countries concerned and donors. For example, the number of people in need of humanitarian assistance in the Democratic Republic of the Congo has reached the same number of such persons in the Syrian Arab Republic, even though the degree of media attention and the amount of international funding allocated are far lower than in the case of the latter State.[17]

22. Internally displaced persons outnumber refugees, and are often at the frontline of conflicts; yet, they tend to fall within protection gaps. Their own States, who are primarily responsible for ensuring their human rights (see E/CN.4/1998/53/Add.2), may not provide adequate support owing to political or financial reasons or lack of capacity. Internally displaced persons might not receive sufficient humanitarian assistance for various reasons, such as political sensitivities, lack of physical or political access or lack of interest; for instance, hundreds of thousands of internally displaced persons affected by the Boko Haram insurgency in Nigeria have had to find their own way to survive in overcrowded camps, which are regularly affected by outbreaks of water-borne diseases.[18]

23. With the resources mobilized to address emergency situations, States and humanitarian actors focus on the timely provision of water and sanitation for life-saving and on the prevention of outbreaks of water-borne diseases, such as cholera. Among the core obligations of the human rights to water and sanitation, some are prioritized under life-saving efforts in humanitarian interventions. In the Sphere standards (see para. 13 above), minimum standards with regard to water, sanitation and hygiene (WASH) are assumed to reflect the core content of the human rights to water and sanitation as to contribute to the progressive realization of these rights. Conversely, according to a handbook to be published by Sphere, "the standards do not fully reflect the human rights to water and sanitation".[19] For instance, water quantity is explicitly prioritized over the water quality, a definition allegedly grounded on the health impact. The core obligation requires, however, a minimum amount of water that is both sufficient and safe.

24. While priorities should certainly be determined in an acute emergency, there is a risk of interpreting "life-saving" from an overly narrow point of view, with no time frame established for progress towards the full realization of the human rights to water and sanitation, such as accessibility, quality and acceptability. For instance, it is estimated that some 624,000 Rohingya fled from Rakhine State, in Myanmar, to camps in south-eastern Bangladesh; water quality tests conducted in the settlements revealed, however, that most of the water was contaminated with E. coli and that 48 per cent was highly contaminated.[20] In order to prevent a cholera outbreak, two months after the displacement the Government of Bangladesh, with the support of the World Health Organization, conducted a vaccination campaign, targeting young children in camps and settlements. While vaccination against cholera can be absolutely crucial to save lives, it cannot be seen as an alternative to improving water and sanitation conditions. It is reported that the access of refugees to safe water and sanitation and their living conditions are still poor; as at May 2018, nine months after the displacement of the refugees, latrines are still not being maintained. Such poor conditions not only undermine the right of the displaced to live in dignity but could also lead to outbreaks of diarrhoea, hepatitis E and typhoid, among other diseases.[21]

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[17] Some 8.9 million people in the Democratic Republic of the Congo lack access to safe drinking water; see Norwegian Refugee Council, "The world's most neglected displacement crises", June 2018.

[18] Eni Alobo and Synda Obaji, "Internal Displacement in Nigeria and the Case for Human Rights Protection of Displaced Persons", *Journal of Law, Policy and Globalization*, vol. 51, 2016, pp. 26–33.

[19] See www.spherehandbook.org.

[20] Maria Francisca Zaragoza Martí, "Water as an element of ethical-political reflection in the new paradigm of migratory governance", *Revista Castellano-Manchega de Ciencias Sociales*, vol. 23, 2017, pp. 175–184.

[21] Sophie Cousins, "Rohingya threatened by infectious diseases", *Lancet Infectious Diseases*, vol. 18, No. 6 (June 2018), pp. 609-610.

25. Equitable access to water, sanitation and hygiene is one of the principles applied to life-saving interventions in humanitarian contexts. Providing equitable facilities is, however, not sufficient to ensure equitable access. The human rights principle of equality and non-discrimination requires actions targeting those "most at risk" and ensuring equal access. While attention is increasingly paid to access to water and sanitation services by persons with disabilities in emergency situations,[22] several studies have revealed that, in multiple camps, water points, toilets and washing facilities, among other facilities, were physically inaccessible to refugees with disabilities.[23]

26. Although menstrual hygiene is not seen as a "life-saving" matter, it is a vital issue for adolescent girls and women who are forced to manage it during emergency situations, something that calls into play not only their dignity but also their safety. Studies have shown that quick and simple consultations can have a positive impact, without causing delays in the implementation of humanitarian interventions.[24] Furthermore, certain issues can be addressed before the outbreak of an emergency if measures for participatory preparedness are taken; for example, Syrian refugee women in Za'atari camp in Jordan reported that the sanitary napkins originally supplied to them were not usable because of their inappropriate nature and inadequate quality (A/HRC/27/55/Add.2, para. 53). Such improvements could be made prior to the influx of forcibly displaced persons.

27. Meeting the essential minimum content of the human rights to water and sanitation cannot be a choice constrained by financial, human or technical capacities. At the same time, States and humanitarian actors can use the essential minimum content as their priority over other demands.

28. Another issue is how to assess whether the essential minimum obligation has been attained, and what to do if it has not. Beyond taking note of the infrastructure available to each person in emergency context, time, access, human and finance capacity constraints make it difficult to conduct research on access to water and sanitation. To ensure effective enforcement, humanitarian actors need additional resources and incentives to carry out research, and to collect and analyse data. Some organizations have begun to gather data in order to study the consequences of crises and to adapt humanitarian interventions accordingly.[25]

2. Outside organized camps

29. Reports indicate that forcibly displaced persons — at least 59 per cent of refugees and around 80 per cent of internally displaced persons — increasingly live outside organized camps.[26] Despite this, humanitarian assistance, including in the form of water, sanitation and hygiene, is usually directed to camps. Forcibly displaced persons living outside of camps tend therefore not to have access to the humanitarian assistance they need.

30. According to a survey conducted in 2011, access to water was ranked as the fifth-most important issue on the list of problems raised by internally displaced persons living in

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[22] See CBM, the International Federation of Red Cross and Red Crescent Societies, the International Organization for Migration, the United Nations Children's Fund, the United Nations Office for Disaster Risk Reduction and the World Health Organization (WHO), *Guidance Note on Disability and Emergency Risk Management for Health*, WHO, 2013.

[23] Women's Refugee Commission, *Disabilities among Refugees and Conflict-affected Populations*, 2018; Mansha Mirza, "Disability and humanitarianism in refugee camps: the case for a travelling supranational disability praxis", *Third World Quarterly*, vol. 32, No. 8 (2011), p. 1527; Jules Morgan, "Disability – a neglected issue in Greece's refugee camps", *Lancet*, vol. 389, No. 10072 (2017).

[24] Crystal VanLeeuwen and Belen Torondel, "Improving menstrual hygiene management in emergency contexts: literature review of current perspectives", *International Journal of Women's Health*, vol.10, 2018, p. 169.

[25] International Committee of the Red Cross (ICRC), *Acquiring and Analysing Data in Support of Evidence-based Decisions: A Guide for Humanitarian Work*, Geneva, May 2017.

[26] Nicholas Crawford, John Cosgrave, Simone Haysom and Nadine Walicki, *Protracted Displacement: Uncertain Paths to Self-Reliance in Exile*, HPG Commissioned Report, September 2015.

urban settings.[27] Most of them live in urban informal settlements, and hence may have no access to piped water or sanitation; some are even forced to use unsafe water and unimproved sanitation solutions. Because of the types of shelter and locations in which they live, some have to rely on expensive water and sanitation provided by informal service providers; for instance, in 2014, in the northern region of Jordan, refugees living outside camps struggled to secure basic living standards in shelters with damaged latrines and leaking sewage pipes, or in informal tented settlements without any latrines at all. They tended to spend a substantial portion of their meagre income on water because they were either not connected to the water network or had only a small water storage capacity in their home. One family of refugees living in a hut outside a refugee camp informed the previous mandate holder that, although the land owner gave them water for drinking and cooking, they had to use unsafe canal water for washing and cleaning (A/HRC/27/55/Add.2, para. 56).

31. Providing assistance to forcibly displaced persons living outside organized camps can be daunting, given that they are often dispersed or hidden in host communities, and therefore harder to reach. Support for access to water and sanitation services can be provided through cash programmes, the upgrading of facilities at the household or communal infrastructure level, or by helping municipality utilities to improve and extend services. Those who require assistance most often do not have access to these services because of the lack of physical accessibility or information on the assistance they could receive, particularly in the case of older persons, persons with disabilities or single parents with many children. Identifying needs of individual level within a household is an even greater challenge owing to the absence of intra-household data; for example, menstrual hygiene management specifically targeting adolescent girls living in a household poses a challenge that has not yet been properly addressed in terms of the development of guidelines or plans of action and implementation by actors involved in such situations.

C. Progressive realization

32. Once the emergency phase is over and the situation has been stabilized by means of humanitarian assistance, the quality of water and sanitation services are expected to improve gradually. Given that, according to the Sphere standards, the WASH minimum standards "contribute to the progressive realization" of the rights to water and sanitation, it seems that the notion of progressive realization of those human rights is widely accepted by humanitarian actors.

33. The progressive realization of the right to water and sanitation in the human rights framework does not simply mean a gradual improvement in and expansion of service levels; it also requires taking deliberate, concrete and targeted steps to the maximum extent of resources available.[28] It also requires planning at the outset of an emergency and the implementation of affirmative actions for disadvantaged groups to raise their level of access to that of the rest of the community.

34. In actual fact, the degree of access does not always improve and can, in some cases, even deteriorate, owing to a decline in political attention, inadequate funding, lack of planning or inadequate support for service providers in assuring the operational continuity of essential services. Wastewater management, for instance, is all too often not considered in the initial planning at the outset of an emergency, for a variety of reasons, not least because it requires significant amounts of upfront financial resources. A sharp increase in wastewater generation inside or outside camps can put stress on an existing system and may require the construction of new wastewater collection and treatment infrastructure, or the upgrading of the existing one, to serve forcibly displaced persons and host communities alike while safeguarding the environment.

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[27] World Bank and UNHCR, *Vulnerability of internally displaced persons in urban settings*, World Bank, Washington, D.C., 2015.

[28] Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 17.

35. Lack of coordination among States, humanitarian actors and local actors, the lack of clear allocation of responsibilities and the lack of leadership by States are often identified as obstacles to the progressive realization of the human rights to water and sanitation during and after the emergency phase. Governments are expected to play a coordinating role; fragile governments, however, are often further disempowered when they are bypassed in the channelling of humanitarian aid. The government bodies responsible for the water and sanitation sector are often scattered and uncoordinated even when the general situation is stable, a fact that makes coordinated humanitarian intervention even more of a challenge. In Haiti, seven months after the earthquake of January 2010, which killed more than 316,000 people and led to the displacement of 1.5 million people, more than 42 per cent of 1,300 camps across the country were still without water, and 29 per cent were without toilets. Data also showed that only one in three camps had access to water before the cholera outbreak. The Government of Haiti received only 1 per cent of international humanitarian funds, while non-governmental organizations acted as implementing agencies for emergency relief and received almost all the humanitarian aid.[29]

36. Even in cases of planned displacement and resettlement, planning of sustainable access to water and sanitation is often missing. In Tajikistan, in 2015, the Special Rapporteur was informed that 42,000 people had been displaced owing to a large dam project, and that many of them had no access to water or sanitation because of the lack of planning and of access to information. Some of the displaced had chosen a particular settlement because of the possibility of extracting groundwater; however, pumping the water from the aquifer had turned out to be too expensive, and they therefore had to rely on expensive water from a water truck, without any prospect of constructing a water system (A/HRC/33/49/Add.2, para. 50).

37. The maximum available resources for the progressive realization of the rights to water and sanitation include both the resources existing within a State and those available from the international community through international cooperation and assistance. Most situations of displacement in fact often rely on external funds given that developing countries continue to host the overwhelming majority of forcibly displaced persons. While the cost of meeting the increasing levels of humanitarian need has been growing steadily, global aid commitments for water and sanitation have declined, from $10.4 billion in 2012 to $8.2 billion in 2015.[30] In emergency assistance, including assistance for forcibly displaced persons, priority should be given to realizing their human rights, including the rights to water and sanitation.[31] The "donor fatigue" witnessed with regard to humanitarian assistance, whereby donors stop or reduce their funding commitments as situations recede, is a major challenge. In 2017, humanitarian funding for the Sudan did not meet half of the funding required, for the first time since 2003. In other countries, such as the Central African Republic, Burundi, Ethiopia and the State of Palestine, less than half of the funds requested were provided in 2017.[32]

38. International cooperation for the realization of economic, social and cultural rights is an obligation of all States, and is particularly incumbent upon those States that are able to assist.[33] Continuing funding is essential for the progressive realization of human rights; developing regions and least developed countries continue, however, to share a disproportionately large responsibility for hosting refugees, asylum seekers and migrants in vulnerable situations.[34] In its statement on the duties of States towards refugees and

[29] Mark Schuller and Tania Levey, "Kabrit ki gen twòp mèt: understanding gaps in WASH services in Haiti's IDP camps, *Disasters*", vol. 38, Suppl. 1, 2014.

[30] UN Water and World Health Organization (WHO), *Financing Universal Water, Sanitation and Hygiene under the Sustainable Development Goals: UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water*, GLAAS 2017 Report, 2017, p. ix.

[31] Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 34.

[32] Norwegian Refugee Council (see footnote 17).

[33] Committee on Economic, Social and Cultural Rights general comment No. 3 (1990) on the nature of States parties' obligations, para. 14.

[34] UNHCR, *Global Trends* (see footnote 2).

migrants under the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights, recognized that some States face a heavier burden than others owing to large flows of migrants fleeing conflict or persecution, and reiterated that the fulfilment of core obligations gave rise to national responsibilities for all States and international responsibilities for developed States, as well as others that were "in a position to assist" (E/C.12/2017/1, para. 18).

III. Protracted displacement

39. Protracted displacement has been defined as displacement in which refugee populations of 25,000 persons or more from the same nationality have been in exile for five or more years. Currently, two thirds of refugees are in a situation of protracted displacement, with an average duration of more than 20 years[35] and an average length of internal displacement of more than 17 years. Ongoing armed conflicts that have lasted for years continue to deepen in complexity, bringing new waves of violence and forced displacement. Disasters can also lead to protracted displacement.

40. In 2009, after 60 years of displacement, attacks on water and sewage infrastructure in Gaza and a blockade imposed on supplies left 10,000 Palestinians with no access to the water network and 900,000 with only irregular access. The damage caused to sewage treatment plants led to the discharge of untreated or only partially treated wastewater directly into the Mediterranean Sea.[36] In Algeria, more than 40 years since the end of the conflict there, some 165,000 Sahrawi refugees still live under the harsh conditions of the Sahara Desert. Although their water supply has moved from shallow to deep ground water wells and an improved system, they still use only 15 to 17 litres of water per person per day.[37] Besides these direct consequences, insufficient system operation and maintenance caused by the lack in human and financial capacity compound the deterioration in access to water and sanitation services even further.

41. Humanitarian assistance that targets formal and informal camps for forcibly displaced persons alone may not be sufficient, and may in fact prevent the full realization of human rights to water and sanitation, which inevitably depends on the capacity of existing services and natural and other resources. In northern Jordan, for instance, the large-scale influx of refugees has put strain not only on both the scarce water resources available and the aging water infrastructure, but also on sanitation systems, including in schools, whose poor facilities discourage girls from attending. In such a situation, efforts to mitigate the additional stress caused by the mass arrival of refugees are insufficient; the shortfall in existing service delivery must be addressed also. The additional pressure placed on water and sanitation services risks becoming a source of social tension between forcibly displaced persons and local populations as well.

A. Towards an inclusive approach

42. Certain humanitarian bodies are increasingly conscious of the need for an inclusive approach to access to water and sanitation, which involves including forcibly displaced persons in national and local development planning. It also involves providing assistance in expanding and strengthening local water and sanitation services, thereby ensuring access to water and sanitation for forcibly displaced persons and other affected populations. Emergencies can be an opportunity not only for ensuring the continuity of service provision, but also for making access to service more inclusive; for example, some interventions conducted by the International Committee of the Red Cross in urban areas affected by protracted armed crises help to strengthen the sustainability and resilience of

[35] Crawford et al., *Protracted Displacement* (see footnote 26).

[36] See A/HRC/38/54, chap. III, ISR 4/2011.

[37] Marta Vivar et al., "An insight into the drinking-water access in the health institutions at the Saharawi refugee camps in Tindouf (Algeria) after 40 years of conflict", *Science of the Total Environment*, vol. 550, 2016, pp. 534–546.

services by supporting local water and sanitation service providers in their task of ensuring the operational continuity of critical functions and access to municipal services for both forcibly displaced persons and host communities.[38] According to information provided by Public Services International, interventions and investments should be integrated into national and local public services, as this will contribute to overall improvements in the quality and delivery of public services that benefit the whole of community, citizens and non-citizens alike.

43. An inclusive approach is also one that addresses other human rights issues in order to achieve the full realization of the human rights to water and sanitation for forcibly displaced persons. Insecurity of tenure prevents internally displaced persons from being able to leave informal settlements and makes them more dependent on informal services. Lack of access to work or livelihood activities denies forcibly displaced persons the ability to live autonomously, and can have a negative impact on the financial sustainability of water and sanitation services, given that they are unable to pay the prices charged. The right to employment is guaranteed to all refugees under the Convention relating to the Status of Refugees; in the case of migrants and other displaced persons, any difference in treatment with regard to access to employment requires justification. According to the Committee on Economic, Social and Cultural Rights, access to education and to employment are important channels for integration within the host country, and will reduce the dependence of refugees and migrants on public support or private charity (E/C.12/2017/1, para. 6).

44. In some cases, States have or report insufficient information on the enjoyment of human rights by refugees, asylum seekers, undocumented migrants and internally displaced persons in human rights monitoring. In the development context, global monitoring of the targets on water, sanitation and hygiene of the Sustainable Development Goals has revealed a lack of disaggregated data on access to water and sanitation by forcibly displaced persons. Without information on the extent to which forcibly displaced persons enjoy human rights, it is difficult to plan and strategize ways to reach them. Research has shown that only 50 per cent of countries around the world have water, sanitation and hygiene policies and plans that include specific measures addressing the needs of refugees and internally displaced persons.[39] Only 14 per cent of countries have specific measures for the allocation of resources to refugees and internally displaced persons, and consistently apply them.

B. The humanitarian-development nexus

45. Despite the fact that displacement is likely to be a long-term issue, both host States and donors often respond to it as if it were a short-term emergency. Protracted displacement can still be an emergency, and the development stage can still revert to an emergency situation. Such situations make interventions more complex; for instance, in the Syrian Arab Republic, parallel interventions on water and sanitation are being conducted. In some stabilized areas, rehabilitation and reconstruction of infrastructure is regarded as a more structured medium- to long-term form of support, while emergency needs continue to be addressed by the humanitarian actors who have access to the areas. Therefore, addressing situations where humanitarian and development activities overlap is an enormous challenge, particularly when States do not have a significant role in coordination, which is often the case during and after emergencies.

46. The Special Rapporteur on the human rights of migrants has compiled a long list of the barriers between peacebuilding and humanitarian actors when they engage with development actors in durable solutions, such as differences in planning and evaluation cycles and methods, lack of data collection and analysis, lack of coordination with Governments and international organizations, and inadequate integration of displacement considerations into development, peacebuilding and human rights capacity-building efforts (A/68/225, para. 42). Sanitation and hygiene have been identified as areas where the

[38] ICRC, *Urban services during protracted armed conflict: a call for a better approach to assist affected people*, ICRC, Geneva, 2015.

[39] UN-Water and WHO, *Financing Universal Water, Sanitation and Hygiene* (see footnote 30).

interaction between humanitarian and development actors has been particularly poor.[40] Such differences could, however, be potential opportunities to complement the capacities and capabilities of different actors. Humanitarian actors, for instance, could make better use of specialized expertise of a development actor who has working experience in the area. The need for the humanitarian and development sectors to align their programmes for common achievements and to move towards a complementary approach has also been highlighted, including at the World Humanitarian Summit.

47. The human rights principles that are vital to the humanitarian-development nexus include sustainability, participation, equality and non-discrimination and progressive realization. What sustainability means for development actors with regard to, inter alia, time frame and targeted groups may be different for humanitarian actors. Water and sanitation services that are the cheapest and quickest to install often do not comply with the normative content of the human rights to water and sanitation, and might require repair or reinstallation in a relatively short period of time. Furthermore, development programmes sometimes impose systems that are not financially sustainable, such as in the case of desalination plants in Kiribati and Tuvalu (see A/HRC/24/44/Add. 1 and 2).

48. The human rights principle of sustainability requires States to adopt comprehensive and integrated strategies and programmes to ensure that sufficient and safe access to water and sanitation is available for present and future generations. This also requires the long-term management of water resources and wastewater. Many important elements for achieving the human rights principle of sustainability are indeed included in both the Sphere standards applied by humanitarian actors and the indicators under the Sustainable Development Goals targeted by development actors, such as the management and maintenance of services, safe excreta disposal and equal emphasis on hygiene promotion as sanitation and water services.[41] Integrating the human rights principle of sustainability into both humanitarian and development planning and programming therefore does not require completely new standards, but rather common planning and targets.

49. One of the key terms repeated in recent discussions on humanitarian aids is "cost efficiency". For humanitarian actors, cost efficiency tends to mean low expenditure of funds to produce a certain outcome; for instance, one cost-efficiency analysis of latrine-building programme looked at the yearly cost per person of latrine access, although it also examined the sustainability of access and the types of access that are easier for women.[42] Similarly, in the development sector, the focus is on cost recovery, where some funders request or even impose an obligation on partner States to recover, fully or at least partially, the costs of operation and maintenance of such systems through tariffs (A/72/127, para. 66). From the point of view of human rights, cost efficiency means that funds should first target the most marginalized groups of people to ensure the minimum content of the rights for everyone, and then progressive improvement of access, without any retrogression. When certain limits of expenditure — per person or per household — are adopted in humanitarian or development programmes, there is a risk of exclusion of hard-to-reach people or of dispensing with some levels of service, which are sometimes necessary to comply with core human rights obligations. States and humanitarian and development actors should develop strategic planning with human rights at the centre, as a continuous obligation. Such an approach requires long-term thinking as much as long-term funding.

50. Failing to fulfil the right to participation of affected populations in both the humanitarian and the development context will have a negative impact on the sustainable access to water and sanitation of forcibly displaced persons. In Aceh, Indonesia, after the tsunami in 2006, large parts of the Government's master plan for reconstruction had to be modified because it had been developed with little input from local communities. Studies have in fact confirmed that reconstruction and development projects have a better chance of sustainability if the views of displaced persons are taken into account. The Special

[40] Nathaniel Mason and Beatrice Mosello, "Making humanitarian and development WASH work better together", Overseas Development Institute, policy brief, August 2016.

[41] Ibid.

[42] See www.rescue.org/sites/default/files/document/956/latrinesdesignedbrieffinal.pdf.

Rapporteur reiterates his view that participation should not be regarded solely as a choice when financial and human capacities are available, but should rather be integrated into humanitarian assistance and development projects as a human right.

C. Enabling return through the realization of the human rights to water and sanitation

51. Safe, inclusive and sustainable access to services, including water and sanitation, is a key factor in motivating forcibly displaced persons to return to their place of origin, when they wish to do so, and is an integral part of early recovery priorities that are sustainable. Return after a protracted period of displacement is a challenge; indeed, return without stable security and access to basic services could lead to the recurrence of forced displacement. In 2016, 552,200 refugees voluntarily returned to their countries of origin, most to Afghanistan. The majority of Afghan returnees cannot go back to their place of origin because of armed conflict and lack of access to land, housing or basic services, and therefore have to settle elsewhere. Many returnees have once again been internally displaced because of insecurity, armed conflict and harsh living conditions. In one study, only one third of internally displaced persons interviewed had access to electricity, an adequate water supply and sanitation facilities.[43] In Yemen, most of the 1 million returnees have returned to their former residence; although many homes have been damaged. returnees are generally unable to afford repairs. They remain vulnerable, and require support to meet their basic needs, together with medium-term support to ensure access to a livelihood and basic services that will make their return sustainable. Drinking water has been identified by many returnees as a priority needs.[44]

52. The return of refugees and internally displaced persons can put pressure on already scarce resources and fragile water and sanitation infrastructures, and can itself become another cause of conflict and tension with the local communities. In the returning process, States and humanitarian and development actors should ensure that planning for the progressive realization of the human rights to water and sanitation is inclusive, thereby preventing tension and further conflict with local communities.

IV. Building resilience and preparedness

53. Access to water has often been a major cause of armed conflict, other situations of violence and social unrest in many places. The impact of the current armed conflict in the Syrian Arab Republic has been exacerbated by severe water shortages due to multi-year droughts since the mid-2000s, combined with other factors, such as long-standing political, religious and social ideological tensions. This has led to the displacement of large numbers of people from rural to urban centres, in turn contributing to political instability, violence and social unrest, in conjunction with food insecurity for more than 1 million people (A/HRC/37/30, para. 12).[45]

54. Emergencies often hit the marginalized hardest, as they have few means to mitigate the impact by themselves and often have no other option but to flee their homes. Strengthening the framework of the human rights to water and sanitation could reduce and mitigate the risks of displacement when emergencies arise. Many human rights issues — equality, the right to housing, the right to participate, the right to information, and access to justice, which all contribute to the resilience of people when they are combined with the realization of the human rights to water and sanitation. There is increasing evidence that violations of economic, social and cultural rights are causes, consequences and often even predictors of an escalation in human rights violations, violence and conflict (A/HRC/37/30,

[43] World Bank and UNHCR, *Research Study on IDPs in urban settings – Afghanistan*, 2011.

[44] Office for the Coordination of Humanitarian Affairs, *2018 Humanitarian Needs Overview: Yemen*, December 2017.

[45] See also Peter H. Gleick, "Water, drought, climate change, and conflict in Syria", *Weather, Climate, and Society*, vol. 6, No. 3 (July 2014).

para. 51). The human rights to water and sanitation can be a gauge of the degree of realization of other economic, social and cultural rights given that water and sanitation are widely accepted as "public services" and are unique in that, in most countries, they are directly run by the public sector, except in cities where these services have been privatized.

A. Participation and access to information

55. Experience has shown that, when an emergency arises, people who take their lives into their own hands and can participate in shaping their fate are more likely to recover from the shock of disasters and are thus more resilient.[46] Empowering people by affording them access to information and participatory mechanisms is therefore crucial. The human rights to water and sanitation include full and equal accessibility not only to information concerning water and sanitation, but also to the environment.[47] Participation and ownership by rights holders will lead to greater resilience in their access to water and sanitation over the long term. In areas prone to armed conflicts and other drivers of displacement, it is particularly important that participatory processes include discussions on how to redesign or adapt access to water and sanitation as a part of resilience mechanisms and as a preventative measure for displacement.

56. Participatory processes can help in the design of culturally acceptable infrastructures, allowing users to gain ownership and therefore feel responsible for maintenance, resulting in greater system sustainability. A pilot project conducted in Kakuma refugee camp, Kenya, to identify alternatives to pit latrines revealed that the participation of users could increase acceptability by users, including those who have special needs, and therefore improve sustainability and resilience.[48] Participation must be a feature of all stages of displacement and, where possible, prior to forced displacement.

B. Remedy and accountability

57. The human rights to water and sanitation include access to effective judicial or other appropriate remedies at both the national and international levels for those whose rights have been denied or violated; those persons should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition.[49] Effective remedy and accountability mechanisms are crucial for the protection of human rights and for strengthening people's resilience. The voices of those whose rights have been affected should be heeded; only in this way can trust in water and sanitation services be built, and deficiencies in the system be identified and addressed. States should take the lead with necessary measures, with the support of humanitarian and other actors. As one aspect of resilience and preparedness, States should take advantage of times of stability to establish clear institutional structures to help in the coordination of water, sanitation and hygiene interventions in times of emergency. States are, however, often fragile and lack the necessary capacity to do so, and therefore leave the decision-making to humanitarian organizations, which either provide water and sanitation services directly or, in some cases, provide support to local service providers. When international organizations and non-governmental organizations play a role in fulfilling the human rights to water and sanitation of forcibly displaced persons, actors in a position of authority and that can have a positive or negative influence on the realization of those rights through their actions (or inaction) or decisions should be held accountable. The principle of accountability requires that actors

[46] Water Kälin, "A Human Rights-Based Approach to Building Resilience to Natural Disasters", 6 June 2011 (available from www.brookings.edu/research/a-human-rights-based-approach-to-building-resilience-to-natural-disasters/).

[47] Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 48.

[48] Raymond Nyoka et al., "Sanitation practices and perceptions in Kakuma refugee camp, Kenya: Comparing the status quo with a novel service-based approach", PLoS ONE, vol. 12, No. 12.

[49] Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 55.

have clearly defined roles, responsibilities and performance standards; accountability of such organizations is however weak and vague in the context of forced displacement.

58. In the humanitarian-development nexus, unclear accountability mechanisms for both humanitarian and development actors are contributing to unsustainable or discontinuous interventions. The primary accountability mechanisms for both actors are centred on accountability to donors, even though accountability to service users is increasingly acknowledged as a shared goal in the water, sanitation and hygiene sector.[50] Both humanitarian and development organizations have thus increasingly developed different accountability mechanisms, such as feedback and complaints mechanisms (including hotlines), despite the fact that there are no established standards on the extent to which they would hold themselves accountable, the kinds of remedies provided, or the handling of complaints received (including data protection). Human rights can offer an accountability framework for organizations; in other words, a basis for defining what people can and cannot claim and how to do it.

59. When many actors are involved without any clear allocation of roles or responsibilities, which is often the case in humanitarian situations, affected persons are unable to claim remedies when their human rights are violated or not realized. The situation in Haiti after the 2010 earthquake was an example of unclear accountability, where non-governmental organizations running camps for internally displaced persons were able to ensure better provision of water, sanitation and clinics in their operational areas, but neither the Government, United Nations agencies or the International Organization for Migration were able to persuade them to work in harder-hit areas.[51] In October 2010, substandard access to safe water and sanitation contributed to an outbreak of cholera, which led to the death of more than 9,000 people and the hospitalization of thousands more.[52] The victims have not had access to remedies either from the United Nations (which was responsible for introducing cholera to the country owing to negligence) or from the State or other organizations, which failed to provide the minimum standard of water and sanitation services.

C. Preparedness

60. International humanitarian actors are usually required to address inadequacies in water and sanitation services and the environmental sustainability issues that predate the onset of a crisis, which then exacerbates these vulnerabilities. Strong human rights protection prior to the onset of the crisis can, however, mitigate vulnerabilities during emergencies and increase the effectiveness of humanitarian assistance. The effects of the realization — or lack thereof — of human rights during times of stability are often repeated or even exacerbated in humanitarian responses. Globally, water services tend to receive more attention, funds and priority than sanitation owing to various reasons, including the greater visibility of water projects, and the stigma and taboos attached to sanitation. As a consequence, 2.3 billion people still do not have basic sanitation services and 4.5 billion people do not have safely managed sanitation, while 892 million have no choice but to defecate in the open,[53] making access to basic sanitation one of the least achieved targets under the Millennium Development Goals. Menstrual hygiene management is most behind in terms of the development of standards and of a comprehensive approach, which would comprise, inter alia, heeding the voices of adolescent girls, their privacy and dignity, and tackling taboos and discrimination. The issue therefore faces challenges similar to those faced by sanitation, but it complicated by the fact that it concerns a women's intimate

[50] Mason and Mosello, "Making humanitarian and development WASH work better together" (see footnote 40).

[51] Schuller and Levey, "Kabrit ki gen twòp mèt" (see footnote 29).

[52] See A/HRC/31/79, chap. II, communication HTI 3/2014, and A/71/367; see also A/HRC/29/34/Add.2.

[53] WHO and UNICEF, *Progress on drinking water, sanitation and hygiene: 2017 update and SDG baselines*, Geneva, 2017.

privacy. It is no accident that access to sanitation and menstrual hygiene management do not receive due and priority attention in the humanitarian context.

61. A national coordination structure to address emergency situations is an important feature of preparedness. During a natural disaster that leads the internal displacement of many people, it is not always clear who is responsible at the governmental level and who is accountable for them, which may lead to inadequate or delayed access to water and sanitation services. The WASH cluster in Ethiopia is strengthening information management and monitoring in the light of the lessons learned with regard to the importance of preparedness and its role in development activities during the previous emergency in 2016.[54]

62. The infrastructure of water and sanitation systems should also be planned in an adaptive way, to allow it to be flexible enough to cope with emergency situations. Contingency plans on, for example, making repairs, are vital to ensure system resilience. To begin with, the Government, in order to ensure preparedness, must be aware of the capacity of existing services and infrastructure, and of the degree of people's access — otherwise, humanitarian actors will struggle to plan, prioritize and choose the most appropriate interventions. In Tunisia, for example, humanitarian actors developed an inter-agency contingency plan, which included an assessment of existing infrastructures and services, in order to be prepared for the potential influx of forcibly displaced persons fleeing violence in Libya in May 2014. Similarly, UNHCR is working with the Government of Turkey to assess the capacity of water and sanitation services in Istanbul in relation to the number of forcibly displaced persons that can be accommodated.

63. Preparedness is also vital in the context of climate change, which is increasingly becoming a major cause of displacement. Since 2008, an estimated 22.5 million people per year have been displaced, internally or across borders, by weather or climate-related disasters (see A/HRC/37/35, para. 5). The adverse effects of climate change have a disproportionate impact on the poor, children, women, persons with disabilities, indigenous people and minorities. The President of Kiribati has advocated for "migration with dignity", given that at least some communities affected by climate change will have to be relocated to less exposed areas (A/HRC/24/44/Add.1, para. 52). The potential relocation of citizens of one State (Kiribati) to an island in the territory of another (Fiji) has serious human rights implications for those relocated, including their rights to essential access to basic services and to nationality. Strengthening adaptation efforts to the decreasing availability of water to those on remote outer islands, while preparing them for informed decision-making on the likelihood of migration, will be a daunting challenge in coming years.

V. Conclusions and recommendations

64. **It goes without saying that forcibly displaced persons need access to water and sanitation continuously en route, in transition and in destination countries for their survival, but also to be able to live in dignity. In actual fact, however, most forcibly displaced persons still endure a lack of adequate access to water, sanitation and hygiene services, including menstrual hygiene management, owing to the frequent change of the actors providing assistance, and discrimination, whether intentional or unintentional. In cases of armed conflict, States and armed non-State actors often eschew their responsibility to provide water and sanitation services and/or to ensure humanitarian access. The Special Rapporteur emphasizes that forcibly displaced persons in need of humanitarian assistance are rights holders. Receiving countries cannot justify restrictions on the enjoyment of the essential content of economic, social and cultural rights on the basis of a lack of resources. States, especially economically developed States, have no justification for providing forcibly displaced persons with substandard water and sanitation services as a means to restrict their entry into the territory of the State or as a means to deter forcibly displaced persons from staying.**

[54] See Ethiopia Humanitarian response 2016, WASH Cluster Bulletin, "Reinforcing preparedness in emergency", October 2016.

65. The Special Rapporteur expresses his concern at the practice followed, during emergencies, of prioritizing certain minimum obligations by narrowly interpreting "life-saving", and of not setting a time frame to move towards the progressive realization of the rights of displaced persons. In stabilized and protracted situations, the degree of access by forcibly displaced persons should progressively improve from the minimum essential level. Progressive realization requires the taking of deliberate, concrete and targeted steps to the maximum extent of available resources; this includes international cooperation and continuing funding. The Special Rapporteur reminds economically developed States that they have a special responsibility to assist the poorer developing States in the provision of safe drinking water and adequate sanitation in a manner that is consistent with the human rights framework.

66. Humanitarian assistance tends to concentrate on camps, even though most forcibly displaced persons actually live outside camps. An inclusive approach that seeks to involve forcibly displaced persons in national and local development planning and in supporting local water and sanitation services is needed. Global monitoring in the development context, however, lacks disaggregated data on access to water and sanitation by forcibly displaced persons. Furthermore, the collection of data and monitoring in humanitarian settings are not well developed. Despite the challenge that the nexus between humanitarian issues and development poses, given the differences that characterize relevant mechanisms, both actors should take advantage of each other's expertise and capacities. Weak and vague accountability of humanitarian and development actors themselves contribute to unsustainable or discontinuous interventions. The human rights framework — in particular the principles of sustainability, participation and accountability, as well as cost-efficiency from a human rights perspective — can offer consistency, given that the persons concerned continue to be entitled to the human rights to water and sanitation throughout the humanitarian and development phases.

67. Strengthening the human rights to water and sanitation during times of stability could help to reduce and mitigate the risks of displacement, since the realization of these rights requires the strengthening of other human rights. The level of the realization of the human rights to water and sanitation can indeed act as a gauge of the implementation of other human rights, and hence reflect people's degree of resilience. The effects of the realization — or lack thereof — of human rights during times of stability are often repeated or even exacerbated in humanitarian responses. Strengthening participation and access to remedies and accountability to all will contribute to strengthening the protection of human rights and the resilience of affected persons when an emergency arises.

68. In the light of the above conclusions, the Special Rapporteur recommends that States:

(a) Guarantee the human rights to water and sanitation by refugees, asylum seekers and migrants in transit or at their destination with the same conditions as those granted to nationals of the States concerned, regardless of their legal status and documentation;

(b) Establish a clear institutional structure in the provision of water and sanitation during times of stability as one aspect of resilience and preparedness;

(c) Strengthen support for the realization of the human rights to water and sanitation by internally displaced persons, and seek international support when needed;

(d) Respect the provisions of international humanitarian law in situations of armed conflict, including by granting safe, rapid and unimpeded humanitarian access to those in need.

69. The Special Rapporteur recommends that States and humanitarian actors:

(a) Apply the framework of the human rights to water and sanitation at all times — before, during and after emergency situations, armed or non-armed conflicts or disasters;

(b) Ensure immediate access to the minimum essential level of water and sanitation on a non-discriminatory basis during situations of emergency, including by:

(i) Ensuring equal access to the minimum essential amount of water that is sufficient and safe for personal and domestic uses and to prevent disease;

(ii) Providing the elements that every person needs for health and survival, and to live in dignity;

(iii) Adopting and implementing a water and sanitation strategy and plan of action that addresses the entire population, including refugees, asylum seekers, migrants and internally displaced persons;

(iv) Monitoring the extent of the realization of the human rights to water and sanitation;

(v) Taking measures to prevent, treat and control diseases linked to water and sanitation;

(c) Apply the human rights principles of progressive realization, using the maximum available resources, and of sustainability;

(d) Develop planning for progressive realization, including efforts aimed at strengthening the operational resilience of water and sanitation services in an inclusive and sustainable manner from the outset of the emergency phase, with an assumption that the situation could continue;

(e) Set up mechanisms for the participation of forcibly displaced persons and other affected populations, from the preparatory processes through to the phases during emergencies, and throughout different stages;

(f) Address the needs of the most at risk when designing water and sanitation interventions, through participatory processes.

70. The Special Rapporteur recommends that States and humanitarian and development actors:

(a) Apply the human rights framework as a humanitarian-development nexus, in particular the principles of sustainability, participation, equality and non-discrimination and progressive realization;

(b) Continue to strengthen efforts for an inclusive approach to address access to water and sanitation by forcibly displaced persons, by:

(i) Including asylum seekers, refugees, migrants and internally displaced persons in national and local development plans, by and monitoring the realization of their human rights to water and sanitation;

(ii) More effectively supporting local water and sanitation service providers in order to improve services and to ensure their operational continuity in an inclusive manner, including by ensuring access by forcibly displaced persons and other affected populations;

(c) Apply an inclusive approach when preparing a safe environment, with access to basic services for the voluntary repatriation, integration and settlement of refugees and internally displaced persons, taking into account their aspirations and with a view to progressively improving services;

(d) Strengthen the human rights to water and sanitation as a means to build the resilience of both people and services, and to reduce and mitigate the risks of displacement by ensuring in particular participation and the right to information, remedy and accountability;

(e) Clearly identify roles, responsibilities and performance standards of actors, and set up accountability mechanisms.

71. The Special Rapporteur recommends that funders and humanitarian and development actors:

(a) Prioritize the allocation of humanitarian and development funds to support the realization of the human rights to water and sanitation by forcibly displaced persons;

(b) Develop a multi-year programming and financing plan to address access to water and sanitation services by forcibly displaced persons and other affected populations in order to achieve the progressive realization of their rights to water and sanitation;

(c) Place greater emphasis on accountability for the affected persons;

(d) Allocate additional resources to humanitarian and development actors so that they may carry out research, and collect and analyse data on access to water and sanitation by forcibly displaced persons.

Annex

Follow-up analysis of official country visits

I. Introduction

1. Pursuant to resolutions 27/7 and 33/10 of the Human Rights Council, the Special Rapporteur on the human rights to safe drinking water and sanitation undertakes official country visits to promote the full realization of the human right to safe drinking water and sanitation, following the criteria of availability, quality, physical accessibility, affordability and acceptability. More concretely, the Special Rapporteur examines the situation of water and sanitation at the national level, identifies good practices, and makes recommendations to the Government on steps to improve access and ensure the protection of human rights to safe drinking water and sanitation.

2. The Human Rights Council encourages all Governments to continue to respond favourably to requests by the Special Rapporteur for visits and information, to follow up effectively on the recommendations of the mandate holder and to make available information on measures taken in this regard (para. 15 of Resolution 33/10). Furthermore, the Manual of Operations of the Special Procedures of the Human Rights Council stipulates that Special Procedures mandate-holders can seek to enhance the effectiveness of their country visits in various ways, including by formulating their recommendations in ways that facilitate implementation and monitoring and undertaking follow-up initiatives through communications and further visits (paras. 97 to 105).

3. In this connection, the Special Rapporteur is seeking to enhance the effectiveness of his official country visits by undertaking a follow-up analysis of those visits focusing on the implementation of recommendations elaborated in the country visit reports.

II. Information on official country visits

4. Since his appointment in November 2014, the current Special Rapporteur undertook official country visits to seven countries:

- Tajikistan (4 to 12 August 2015, A/HRC/33/49/Add.2)
- Botswana (9 to 17 November 2015, A/HRC/33/49/Add.3)
- El Salvador (11 to 18 May 2016, A/HRC/33/49/Add.1)
- Portugal (5 to 13 December 2016, A/HRC/36/45/Add.1)
- Mexico (2 to12 May 2017, A/HRC/36/45/Add.2)
- India (27 October to 10 November 2017, A/HRC/39/55/Add.1, report forthcoming)
- Mongolia (9 to 20 April 2018, A/HRC/39/55/Add.2, report forthcoming)
- Malaysia (dates confirmed for 21 November to 4 December 2018)
- Lesotho (dates confirmed for 4 to 15 February 2019)

5. Since the mandate was established in 2008, the former and current Special Rapporteur conducted a total of 22 country visits corresponding to the following geographical distributions:

Table 1 List of all official country visits undertaken by the mandate of the Special Rapporteur on the human rights to safe drinking water and sanitation

Country	*Date of visit*	*Regional Group*
Egypt	21–28 June 2009	Africa
Namibia	4–11 July 2011	Africa
Senegal	14–21 November 2011	Africa
Kenya	22–28 July 2014	Africa
Botswana	9–17 November 2015	Africa
Bangladesh	3–10 December 2009	Asia-Pacific
Japan	20–28 July 2010	Asia-Pacific
Tuvalu	17–19 July 2012	Asia-Pacific
Kiribati	23–26 July 2012	Asia-Pacific
Thailand	1–8 February 2013	Asia-Pacific
Jordan	11–16 March 2014	Asia-Pacific
Tajikistan	4–12 August 2015	Asia-Pacific
India	27 October to 10 November 2017	Asia-Pacific
Mongolia	9 to 20 April 2018	Asia-Pacific
Slovenia	24–28 May 2010	Eastern Europe
Uruguay	13–17 February 2012	Latin America and the Caribbean
Brazil	9–19 December 2013	Latin America and the Caribbean
El Salvador	11–18 May 2016	Latin America and the Caribbean
Mexico	2–12 May 2017	Latin America and the Caribbean
Costa Rica	19–27 March 2009	Latin America and the Caribbean
United States of America	22 February to 4 March 2011	Western Europe & Others
Portugal	5–13 December 2016	Western Europe & Others

III. Scope of the follow-up analysis project

6. In the first half of 2018, the Special Rapporteur commenced the follow-up analysis of the first five official country visits undertaken since 2015, namely, Botswana, El Salvador, Mexico, Portugal, and Tajikistan.

7. The Special Rapporteur intends to continue the follow-up analysis of all the official country visits undertaken by him as well as those undertaken by the former Special Rapporteur. In 2019, he will focus on the follow-up analysis to India and Mongolia and visits undertaken by the former Special Rapporteur, the latter focusing particularly on those countries that will be reviewed by relevant treaty monitoring bodies or under the Universal Periodic Review of the Human Rights Council in 2019 and 2020.

IV. Methodology

A. Desk research

8. At the initial stage of the follow-up analysis project, the Special Rapporteur has undertaken research on the recent developments related to the recommendations elaborated in his official country visit reports. This preliminary analysis firstly involves a mapping exercise of the recommendations and key issues mentioned in the body of each country visit report, aiming to identify particular and cross-cutting issues of relevance to the human rights to water and sanitation in the country. Secondly, based mainly on the issues addressed in the recommendations, but not limited to those issues, desktop research is carried out to obtain information on the new developments particularly related to the implementation of the recommendation since the Special Rapporteur's visit.

9. The structure of the preliminary analysis is composed of: (1) issues and information identified in the report, (2) corresponding recommendation(s) of the Special Rapporteur and (3) information on relevant developments. A sample extract from the preliminary analysis on the visit to Botswana is introduced below.

Table 2 Extract from preliminary analysis of Botswana visit

Issues and information identified in the report	C. Women and girls Para. 63: Women and girls disproportionally affected by lack of access to water and sanitation and bore heavier border Para. 64: Lack of women's participation in decision-making Para. 65: Inadequate water, sanitation and hygiene in schools affecting girls
Recommendation of the Special Rapporteur	Recommendation (A/HRC/33/49/Add.3, para. 72(o)): Increase the participation of women in decision-making relating to water and sanitation and take special measures to reduce the disproportionate burden on women caused by the lack of access to water and sanitation
Relevant developments	• National Development Plan 11 During National Development Plan 11, gender analysis and gender equality centered planning will be promoted to inform gender-responsive and rights-based policies. This will facilitate, amongst others, fairness of treatment, including in the distribution of development resources and opportunities between women and men. Implementation of gender mainstreaming as a strategy for sustainable development will be intensified across sectors to ensure equal and meaningful opportunities for women and men to participate in and benefit from socio-economic, cultural and political development initiatives of the country (NDP 11, 2017–2023) • Committee on the Elimination of Discrimination against Women, Fourth periodic report submitted by Botswana received in November 2017 "The Gender National Strategy adopted by the National Gender Machinery has prioritized the following national development areas for gender mainstreaming: … Social Protection and social services (health, adequate sanitation and improved well-being, access to quality education, training and information, safe housing and consideration for addressing issues of energy and climate change for a sustainable

environment) ... Access to justice, protection of human rights and freedom from violence; Special measures targeting vulnerable groups of men, women, girls and boys across all the four areas." (CEDAW/C/BWA/4, para. 31)

10. The primary source of information for the preliminary analysis is official sources from Governments or international organizations. In particular, the Special Rapporteur consulted reports submitted and issued in the context of international treaty monitoring processes and the Universal Periodic Review of the Human Rights Council. He also consulted official information from national legislative, regulatory other governmental bodies to identify any recent developments on legislative, policy and regulatory measures related to the human rights to safe drinking water and sanitation. Finally, he examined reports from international cooperation partners and from international organizations that have a presence or activities in the country in question.

B. Consultation process: questionnaire to Government and other stakeholders

11. In order to collect further information, the Special Rapporteur used a questionnaire as a tool to obtain the information necessary to assess the status of implementation of the recommendations. The Special Rapporteur sent a questionnaire to each Government and he invited the civil society and other stakeholders to contribute to this follow-up analysis by submitting a written response to the specific questionnaire. A sample questionnaire is presented below.

12. All questionnaires sent to the Government and other stakeholders for each official country visit can be found at: www.ohchr.org/srwaterandsanitation/followup.

Table 3 Extract from Questionnaire sent to the Government of Botswana

Questionnaire to the Government of Botswana

Please respond to below questions regarding the status of the recommendations made in my report on the visit to Botswana in November 2015 (A/HRC/33/49/Add.3).

Recommendation (A/HRC/33/49/Add.3, para. 72(a))

"Adopt the draft national water policy in order to approach water and sanitation issues in a comprehensive manner guided by the principles and normative content of the human rights to water and sanitation. Such a policy should include a long-term strategy for sustainable water resources management, taking into account the foreseen increase in water stress";

Question 1. Please describe how the National Water Policy (approved by the Parliament in 2016) incorporates the framework of the human rights to water and sanitation including how it addresses situations of water stress. Please provide a copy of the National Water Policy.

Question 2. Please clarify the status of the creation of a National Waste Management Policy and describe how it incorporates the framework of the human rights to water and sanitation. Please provide a copy of the National Waste Management Policy.

C. Analysis

13. The Special Rapporteur is currently analysing all relevant information related to the recommendations elaborated in his country visit reports with the aim of providing an assessment on the status of implementation of the recommendations.

14. The final analysis will identify each recommendation under the following categories: "Fully implemented", "Partially implemented/Implementation in Progress" or

"Implementation not yet initiated". The analysis of each recommendation will include a summary of the assessment, describing the elements that the Special Rapporteur based to identify the status of the implementation of each recommendation.

V. Presentation of the findings

15. Following the research and consultation process, the Special Rapporteur will present his final analysis of the first five official country visits in the second half of 2018. Moreover, the Special Rapporteur will present the findings of the follow-up analysis of the remaining country visits at the conclusion of each analysis.

16. All final analysis will be published on the mandate website hosted by the Office of the High Commissioner for Human Rights at:

www.ohchr.org/srwaterandsanitation/followup.